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IN THE

Supreme Court of the United States

No. 15—October Term, 1961

THE WESTERN UNION TELEGRAPH COMPANY,
Appellant,

against

COMMONWEALTH OF PENNSYLVANIA, by
SIDNEY GOTTLIEB, Escheator,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

BRIEF OF THE STATE OF NEW YORK, AMICUS CURIAE, FOR REVERSAL

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Statement

This brief is filed by the Attorney General of the State of New York, *amicus curiae*, in support of the position that New York is the State in which are grouped the dominant and essential elements in respect to the obligation of appellant The Western Union Telegraph Company, upon its telegraphic money order transactions, so that it is New York which has the right to take custody, as abandoned property, of unclaimed moneys held by the Company arising out of these transactions.

This appeal involves the contention of the Commonwealth of Pennsylvania, which prevailed below, that it has the right of escheat of moneys received in Western Union offices in Pennsylvania, for transmission of telegraphic messages for delivery of negotiable drafts, wheresoever such messages are directed, wheresoever the drafts are issued and wheresoever any other transaction relative to the drafts subsequent to the application takes place or might take place, though all such subsequent steps be outside Pennsylvania.

The Pennsylvania decisions in this case

The Supreme Court of Pennsylvania, affirming the Court of Common Pleas of Dauphin County, Pennsylvania, upheld Pennsylvania's contention. The basis of the Supreme Court's decision appears to be summed up in the following statement in its opinion (R., p. 93):

"The Western Union Telegraph Company is not domiciled in Pennsylvania, but it is subject to its jurisdiction since it transacts business here in many offices, and personal service was obtained upon it in Pennsylvania. Moreover, all the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania."

The opinion of the Supreme Court of Pennsylvania is reported in 400 Pa. 337, 162 A. 2d 617.

The opinions of the Court of Common Pleas of Dauphin County, Pennsylvania are reported in 73 Dauphin County Reports 160, and 74 Dauphin County Reports 49.

The Material Facts

The Western Union Telegraph Company, a corporation organized and existing under the laws of the State of New York, has its principal office in the City of New York, State of New York (R., p. 13). It is authorized to do business in every State in the United States except Alaska and Hawaii, and in the District of Columbia, as well as in foreign countries (*id.*). It is a matter of common knowledge that there are many thousands of Western Union offices in the several States.

One facet of Western Union's business is the telegraphic money order transaction.

The method of this operation is detailed in the stipulation of facts (R., pp. 17-30), and summarized in the Statement in appellant's brief (Br., pp. 6-7).

From the details of the method of operation, these facts are distilled:

1. The Western Union Telegraph Company, with its principal office in New York State, and not any of its thousands of units, is responsible for the delivery of the money orders, the honoring of the money orders, and when the money orders are undeliverable, the refund of moneys to the senders.

2. The moneys received from senders in Western Union's units, all over the United States, are ultimately remitted to Western Union's principal office in New York State.

3. It is from Western Union's principal office in New York State that its units all over the United States are kept supplied with moneys with which to honor money orders or make refunds to senders.

4. Western Union's units throughout the United States honor money orders or make refunds to senders, irrespective of the unit where the sender applied for the money order and irrespective of the unit where the money order was delivered, or upon which fiscal agent it was drawn.

5. There could be (other than New York, the State in which the elements of Western Union's total obligation on the money orders are grouped) a number of States which the same money order transaction would touch, for example:

a. The state in which the application for the money order was made and the money paid over by the sender [the contact upon which Pennsylvania here relies];

b. The state where the money order was delivered to the payee;

c. The state of residence of the payee;

d. The state of the sender's residence;

e. The state where the fiscal agent on which the money order was drawn is located.

Summary of Argument

The decision on this appeal should be one that will resolve the existing and potential conflict among the States produced by the fact that moneys unclaimed in Western Union money order transactions result from a predominantly multi-state operation.

It is Western Union Telegraph Company, which has its principal office in New York State, that is liable upon

all telegraphic money order transactions no matter in which states various steps in respect to the transaction take place, and not any of its thousands of units. It is from Western Union's principal office in New York State that honoring all its money order transactions is controlled. It is in Western Union's principal office in New York State that the essential elements of Western Union's liability on these obligations are grouped.

The state in which application for money orders is made has a minor contact with every such transaction, and is but one of several states which could have some contact with the same transaction.

New York, as the focal state of obligation, should be held to be the state which has the right to take custody of such unclaimed moneys.

A salutary result of such ruling would be that it would put an end to the chaotic reaching for unclaimed moneys arising out of the same transaction by each of the states which can point to the occurrence of some step of the transaction within its jurisdiction.

ARGUMENT

I

The issue which the facts of this case and circumstances on this appeal present for decision is not whether Pennsylvania has any jurisdiction to exercise the power of escheat for which it contends in this action, but in what state are centered the dominant elements of the obligor's liability on these predominantly interstate transactions, with resulting jurisdiction over unclaimed moneys arising therefrom. The rejection of Pennsylvania's claim is necessary to eliminate confusion and conflict among a number of states contending therefor on the assertion of jurisdiction over some step in the transaction.

The very reason for being of these money order transactions is that persons, who chance to be in one place, desire to transmit moneys to persons who chance to be distant from them. Therefore, in the nature of these transactions several states are virtually bound to have some "contact" with each and every such transaction.

When the Company's obligation cannot be consummated by payment to the payee or refund to the sender, Western Union holds the unclaimed moneys with which to meet this obligation. And the conflict exists or threatens among the several states, with abandoned property or escheat laws, which have had any contact with these transactions constituted, as these are, of a number of steps.

The issue before the Court is the subduing of this conflict and confusion, by a determination of the state in which the basic aspects of the obligation are centered.

This Court has been aware of the problem inherent in a number of states asserting jurisdiction to escheat the

same unclaimed property. The Court has been aware of the deficiencies in determining the power of escheat by one state in contest with the holder of the unclaimed property, in the absence of any other state which might also assert a right of escheat of the same property (*infra*, *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U. S. 541 [1948]; *Standard Oil Company v. New Jersey*, 341 U. S. 428 [1951]).

In both *Connecticut Mutual Life Ins. Co. v. Moore* and *Standard Oil Co. v. New Jersey* the Opinions of the Court noted the absence of any state asserting jurisdiction of the unclaimed moneys involved, other than the suing state (333 U. S., at p. 548; 341 U. S., at p. 443).

The dissenting opinions in each case objected to the Court's ruling on the claims of the state to the action without the opportunity to hear the claims of other states. (*Connecticut Mutual Life Ins. Co. v. Moore*, *supra*, at pp. 555-556; *Standard Oil Co. v. New Jersey*, *supra*, at pp. 444-445.) The dissenting Justices commented on the seeds of conflict among the states sown by the subject of escheat, and the desirability, even the necessity, of this Court's halting the growth of the crop of litigation that would develop from them. To recall some of these comments—

Connecticut Mutual Life Ins. Co. v. Moore, *supra*

at p. 554, Mr. Justice FRANKFURTER:

"* * * a mutilated affirmance of the decision of the New York Court of Appeals, with everything else left open is bound to hatch a brood of future litigation."

at p. 556, Mr. Justice FRANKFURTER:

"* * * the essential problem is the legal adjustment of the conflicting interests of different States, be-

cause each may have some relation to transactions which give rise to funds that undoubtedly are subject to escheat."

at p. 563, Mr. Justice JACKSON:

"While we may evade it for a time, the competition and conflict between states for 'escheats' will force us to some lawyerlike definition of state power of this subject. . . . This competition and conflict between states already require us, in fairness to them, to define the basis on which a state may escheat."

Standard Oil Co. v. New Jersey, supra

at p. 444, Mr. Justice FRANKFURTER:

"The Constitution ought not to be placed in an unseemly light by suggesting that the constitutional rights of the several States depend on, and are terminated by, a race of diligence."

The instant case the Court need not decide in "mutilated" form or by according the race to the swift.

On this appeal the Court has before it one State—Pennsylvania—representative of several states which may have "a" contact with the same money order transactions. Also before it is New York State, the state of the location of the principal office of the obligor, where are centered all of the ultimate and essential factors which constitute the responsibility and liability of the Company for the drafts which the public knows as "Western Union money orders".

Every one of the states of the United States which has an abandoned property or escheat law might bring an action similar to Pennsylvania's, for Western Union is authorized to do business in 48 states and in the District of Columbia. In each of these states it receives applications for transmittal of money orders and receives moneys therefor from the senders.

Every state having an abandoned property or escheat law might on the basis of some "contact" with the same money order transaction other than as the place where the application is made, assert a right to unclaimed moneys arising out of the transaction on the basis of some other step in the transaction.

In these United States, in this increasingly mobile era when so very many aspects of people's lives reach out of one state and into other states, when people do not find themselves or deem themselves contained within the borders of a single state, the need is great for a reconciliation of conflicts and confusion which rigid reliance by each state on its jurisdictional or sovereign rights produces.

This Court is the only authority, the single arbiter, which can effect that reconciliation.

This Court's determination that the pre-eminent factors connected with a transaction point to one state as having jurisdiction over unclaimed moneys to the exclusion of other states having lesser contacts therewith, will in the final analysis not cause any state to suffer. For while the facts in one situation would lead to decision in favor of one state, the facts in another situation will deny jurisdiction to it and benefit another state.

In the instant case, dealing with unclaimed moneys arising out of Western Union money order transactions, the elimination of conflict and confusion among the states inevitably arising out of this predominantly interstate operation, requires that the decision be in favor of New York State, where the dominant and essential aspects of the Company's obligation in respect to these transactions are centered (*infra*, Point II).

For this Court to approve the exercise of the power by a state merely because it has some modicum of jurisdiction, such as the Commonwealth of Pennsylvania in this case, would stimulate, encourage and provoke future conflict, not settle it.

In *Connecticut Ins. Co. v. Moore, supra*, and *Standard Oil Co. v. New Jersey, supra*, the Court recognized the propensity for conflict among states arising out of the growing tide of escheat statutes. Escheat statutes and state escheat activity have been burgeoning since these two decisions.

The opinion of the Supreme Court of Pennsylvania concludes with assurance to Western Union that it need not fear that the moneys involved would be subject to double escheat, because the Pennsylvania decree would be entitled to full faith and credit (R., p. 97). Were this indeed so, there would be a race among the states not only to the Courts, but to the Legislatures for a reduction in the time period in escheat statutes, in order to secure the first escheat judgment or decree—the “unseemly” use of the Constitution to which Justice FRANKFURTER referred (*Standard Oil Co. v. New Jersey, supra*, at p. 444).

II

New York is the state in which are centered the dominant elements in respect to Western Union's obligation to honor its money order transactions.

In the case at bar, the *res* is the obligation of the Western Union to honor its money order transactions. The application for the telegraphic message and the receipt of the

money therefor in one of the Western Union units is but the first step in the operation. The subsequent steps, the issuance of the draft, the payment of the amount of the draft either to the payee or to another who has cashed it, the refund to the sender if delivery cannot be made to the payee, all these in the vast proportion of these transactions do not occur in the state where the application is made.

Thus the call upon Western Union for the moneys involved in the transactions is rarely made in the state where the application for the telegraphic message is made. It might be in any one of a number of states, dependent in each transaction upon what transpires after the telegraphic message is sent. For example, whether the money order is deliverable; if it is, whether the payee cashes it at the office in which it is delivered or carries it away; if he carries it away, where he is resident; if the money order cannot be delivered to the payee, where refund can be made to the sender.

It follows that the moneys cannot be deemed unclaimed or abandoned in the state where the application for the telegraphic message is made.

At this point we would observe that the opinion of the Supreme Court of Pennsylvania declared that "all the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania" (R., p. 93). This, as has been shown *passim* in this brief, is just not the fact. The step that occurred in Pennsylvania upon which Pennsylvania founds its claim (R., p. 2; complaint ¶ 5), was merely the filing of the application for the telegraphic message and handing over the money therefor. The send-

ers were not given the money orders. The money orders were to be delivered elsewhere and all other steps "which are the bases of the respondent's outstanding obligation" were to take place elsewhere. Even the refund, if the money order was impossible of delivery, would not necessarily take place in Pennsylvania. So that not "all", but merely one minor step in the transaction occurs where the application is made.

In light of the facts, the issue to be decided is in which state of all the states in which some step may take place, the ultimate obligation is centered.

The state is New York State. To recapitulate, the ultimate obligation is that of the Company and not any of its thousands of offices or units. The units or the banks on which the drafts are drawn are merely the mediums through which the Company may fulfill its obligation. No one of these mediums owes the obligation. The payee, or the sender when the payee has not been located, may turn to any one of the units of Western Union to meet the Company's obligation on these transactions.

The Company's resources to meet all of its money order obligations are at its principal office in New York State. To the principal office in New York State moneys not used for operational needs of the units all over the United States are sent (R., pp. 25-26). From the principal office in New York State moneys are sent to the Company's units wherever a unit runs short of funds needed for its operations. By regulation of the Federal Communications Commission moneys representing money order transactions not claimed within two years are carried on the Company's books as income (R., pp. 25-26).

Conclusion

An orderly and harmonious solution of a situation fraught with potentialities for confusion and conflict among the states, and provocative of multiple litigation stemming from the same transactions, points to this Court ruling in this case in disapproval of the claim of the Commonwealth of Pennsylvania and approval of the right of the State of New York to take custody of unclaimed funds arising out of Western Union Telegraph Company's money order transactions.

The decision below should be reversed.

Dated: September 29, 1961.

Respectfully submitted,

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APPENDIX**Text of Relevant Sections of New York
Abandoned Property Law****§ 102. *Declaration of policy***

It is hereby declared to be the policy of the state, while protecting the interest of the owners thereof, to utilize escheated lands and unclaimed property for the benefit of all the people of the state, and this chapter shall be liberally construed to accomplish such purpose.

§ 1309. *Uncashed travelers checks and money orders*

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check or money order on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, which shall have been outstanding for more than fifteen years from the date of its sale, shall be deemed abandoned property.

2. On or before the first day of May in each year commencing with the year nineteen hundred forty-nine every such organization holding or owing such abandoned property shall make a verified written report to the state comptroller of all such abandoned property held or owing by it as of the thirty-first day of December next preceding. Such report shall set forth the amount and identifying number of each travelers check and money order for the payment of which such abandoned property is held or owing.

3. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all

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abandoned property specified in its report of that year, excepting such abandoned property as shall have ceased to be abandoned since the date as of which such report was prepared. Such payment to the state comptroller shall be accompanied by a statement setting forth such information as the state comptroller may require relative to such abandoned property as shall have ceased to be abandoned.

4. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amount so paid, and after audit the state comptroller shall pay the same without the deduction of any service or other charge.